UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte RAVIKUMAR PISUPATI

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Appeal 2009-007173
Application 10/052,612
Technology Center 2400

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Before LANCE LEONARD BARRY, ST JOHN COURTENAY III, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-6, 8-29, 31, and 32. The
Appellant appeals therefrom under 35 U.S.C. § 134(a). We have jurisdiction
under 35 U.S.C. § 6(b).

INVENTION

The Appellant describes the invention at issue on appeal as follows.

> One embodiment . . . is a network comprising a plurality of computing elements each of which comprises computing resources for supporting one or more services and a redirector, communicatively connected to each of the computing elements, configured to serve as an email proxy for the plurality of computing elements, wherein the services are controlled by email messages routed by the redirector among the plurality of computing elements.

(Spec. 2, ¶ [0008].)

ILLUSTRATIVE CLAIM

1. A computer network for providing services comprising:

a plurality of computing elements each of which comprises general-purpose, programmable computing resources that can be selectively programmed for supporting one or more of a plurality of different electronic services, wherein said services are controlled or operated by commands or data transmitted via email;

a mail server for receiving and routing email; and

a redirector, separate from said mail server, communicatively connected to said mail server and each of said computing elements, wherein said redirector receives email from said mail server, wherein each email contains a command or data for a specific said service, with or without being addressed to a specific computing element, and wherein said redirector is configured to selectively match an available computing element with a specific service request of an incoming email, whether or not said email is addressed to a specific computing element, and forward at least a portion of the email to that available computing element so as to deliver said command or data to that specific service, such that said

redirector serves as an email proxy for said plurality of
computing elements;

    wherein said electronic services are controlled by said
email routed by said redirector among said plurality of
computing elements.

REJECTIONS

1.   Claims 1, 4-6, 11, 13, 15, 16, and 21 stand rejected under 35
U.S.C. § 103(a) as being unpatentable over U.S. Patent Application
Publication No. 2002/0087619 A1("Tripathi"), U.S. Patent Number
7,231,445 B1 ("Aweya") and Peterson et al., Computer Networks: A System
Approach, Morgan Kaufmann Publishers, 634-40 (2nd ed. 2000)
("Peterson").

2.   Claims 2, 3, 8, 9, 12, 17, 18, and 24 stand rejected under 35
U.S.C. § 103(a) as being unpatentable over Tripathi, Aweya, Peterson, and
U.S. Patent No. 5,819,110 ("Motoyama").

3.   Claims 10, 19, and 20 stand rejected under 35 U.S.C. § 103(a)
as being unpatentable over Tripathi, Aweya, Peterson, Motoyama, and U.S.
Patent No. 6,480,901 B1("Weber").

4.   Claims 14, 22, 23, 26-29, 31, and 32 stand rejected under 35
U.S.C. § 103(a) as being unpatentable over Tripathi, Aweya, Perterson, and
U.S. Patent Application Publication No. 2002/0156876 A1("Hartman").

5.   Claim 25 stands rejected under 35 U.S.C. § 103(a) as being
unpatentable over Tripathi, Aweya, Peterson, Motoyama, and Hartman.

ISSUE

The issue before us is whether the Examiner erred in combining teachings from Tripathi and Aweya to reject independent claims 1, 11, and 26.

FINDINGS OF FACT

Tripathi describes its invention as "a method and system that enables system administrators to take action remotely based on the health status of server[(s)]." (Tripathi, ¶ [0007].) "In short, via e-mail, a network administrator may have access to complete server status information, manipulate the state of server[s] . . . , and take remedial actions." (*Id.*, ¶ [0019].) "Such actions may include shutting down, rebooting, and powering off a server." (*Id.*, ¶ [0005].)

Aweya describes its invention as "a technique for adaptively distributing a web server request in a system having a plurality of web servers . . . ." (Aweya, col. 3, ll. 18-20.)

ANALYSIS

Figure 3 of Tripathi, on which the Examiner relies, follows.
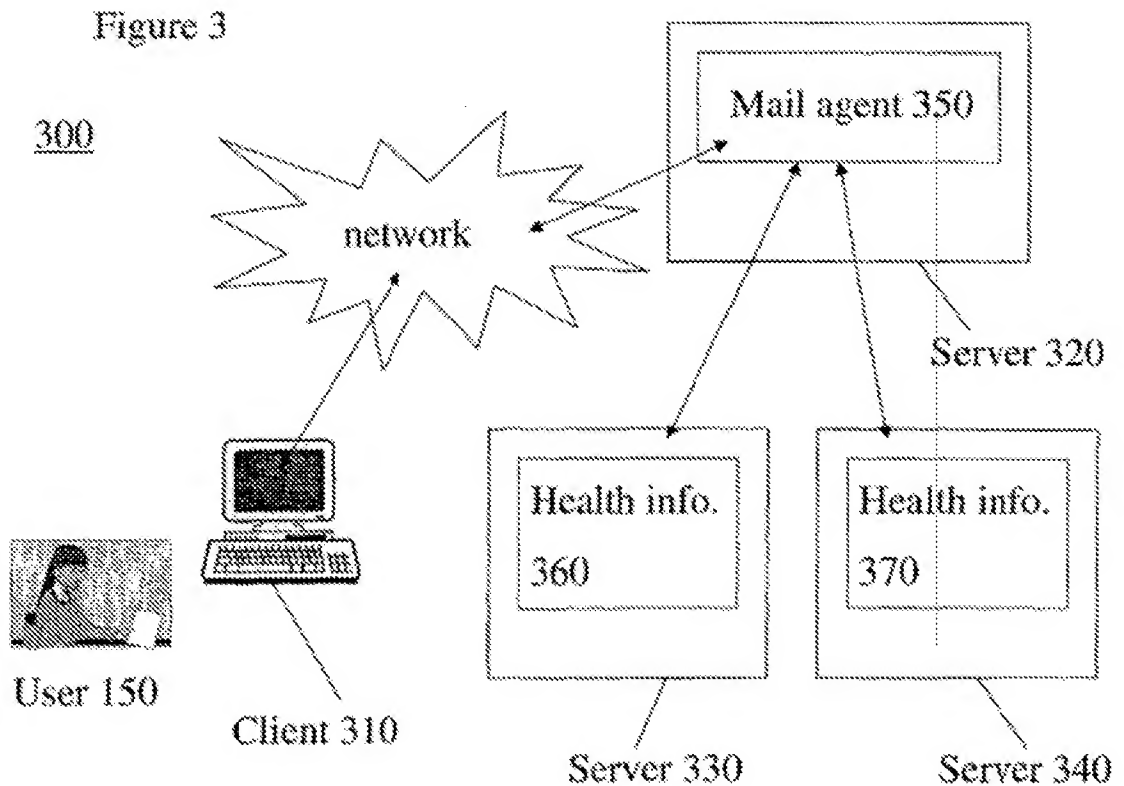

Figure 3

FIG. 3 is a block diagram illustrating system 300 (Tripathi, ¶ [0029].)
In this system, finds the Examiner, "mail agent 350 receives email from
client 310 via network and, based on the commands in the email, will
contact servers 330, 340 to effect control of a command found within the
email) (Figures 3,4, ref. 300, B430; p. 2, ¶ 30)[.]" (Ans. 4.) He admits that
"Tripathi does not specifically state that the redirector matches the request to
an available computing element . . . ." (*Id.* at 5.)

The Examiner finds, however, that "Aweya discloses another web
service processing system which discloses receiving a request for a service,

and, based on resource availability, will determine which server to route the request . . . ." (*Id.* at 13.) He adds the following conclusion and findings.

> It would have been obvious to one of ordinary skill in the art to combine the teaching of Aweya with Tripathi in order to utilize the admission control process of Aweya with a plurality of mail agents of Tripathi in order to redirect client requests to other web server systems when the present mail agent resources are running low, thereby reducing the likelihood of having to queue requests or even dropping requests as supported by Aweya (col. 10, lines 15-28).

(*Id.* at 5.)

"What the prior art teaches and whether it teaches toward or away from the claimed invention . . . is a determination of fact." *Para-Ordnance Mfg., Inc. v. SGS Importers Int'l, Inc.*, 73 F.3d 1085, 1088 (Fed. Cir. 1995). "A teaching away does not have to be express; it may be implied. A reference teaches away impliedly when a modification or combination would render inoperable the invention disclosed in the reference." *Teaching a Way is not Teaching Away*, 79 J. Pat. & Trademark Off. Soc'y 867, 872 (1997)).

> Here, we agree with the Appellant's following observation.

> Tripathi states that an incoming email message to the mail agent (130) will "specify whether the service requested relates to a specific server, such as server 330, server 340, or another computer within a network, or whether the service is applicable to one or more specific servers within the network, or to all such servers." (Tripathi, ¶ [0030]).

(App. Br. 14.)

For its part, Aweya's "web server system 10 . . . support[s] a new client request admission control and distribution scheme . . . .

The web server system 10 comprises . . . a plurality of web servers 14." (Aweya, col. 4, ll. 23-27.) The latter reference explains that a new "client request is passed to a load balancing or request distribution process. The new client request distribution process determines, based on the same periodic load measurements, which web server 14 will be assigned to handle the new session." (*Id.* at ll. 46-51.)

We find that if Aweya's teaching of a request distribution process were combined with Tripathi's teaching of remotely managing network servers, the combination would have left the invention disclosed in the latter reference "inoperable for its intended purpose." *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984). More specifically, the combination would inevitably redirect a request intended for a specific server to another server in the interest of load balancing. For example, an administrator's request to reboot server 330, when it was busy, may be redirected to server 340, when it was idle, thereby shutting down the wrong server.

Consequently, Tripathi "teaches away from this" (App. Br. 13) combination proposed by the Examiner. Therefore, we conclude that the Examiner erred in combining teachings from Tripathi and Aweya to reject independent claims 1, 11, and 26.

DECISION

We reverse the rejections of claims 1, 11, and 26 and those of claims 2-6, 8-10, 12-25, 27-29, 31, and 32, which depend therefrom.

<u>REVERSED</u>

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